Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 78-1160

THEODORE R. SAKER, *et al.*,
Appellants,

v.

THE HARPSTER BANK,
Appellee.

MOTION TO DISMISS APPEAL

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THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

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The Harpster Bank, appellee herein, respectfully moves this Court for an order dismissing the appeal on the ground that the appeal is not within the jurisdiction of this Court, because not taken in conformity to statute or to the rules of this Court.

This motion is based on the fact that the appellant has indicated in his Notice of Appeal that this appeal is being taken pursuant to 28 USC Section 1257 (2), but no where in his Jurisdictional Statement does he specify the particular Ohio statute the validity of which is being questioned on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

In addition, the appellant fails to include within his Jurisdictional Statement most of the material required by Rule 15 of this Court.

In his Notice of Appeal, the appellant states on page one that his appeal is taken pursuant to 28 USC §1257 (2). That particular section provides as follows:

> Section 1257. State courts; appeal; certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) . . .
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

In this case, no Ohio statute was ever drawn into question at any level of the proceedings. The appellant has failed to set forth for this Court the particular Ohio statute which he contends is drawn into question. Indeed, he cannot do this because no such ground has been presented to or considered by the Courts of the State of Ohio. Accordingly, this Court has no jurisdiction of this suit. *Michigan Cent. R. Co. v. Michigan Southern R. Co.*, Mich. 1857, 60 U.S. 378, 19 How. 378, 15 L. Ed. 689; *Murdock v. Memphis, Tenn.*, 1875, 87 U.S. 590, 20 Wall. 590, 22 L. Ed. 429; *Adams v. Preston*, La. 1860, 63 U.S. 473, 22 How. 473, 16 L. Ed. 273.

In addition, the appellant's Jurisdictional Statement fails to comply with the very specific commands of Rule 15 of this Court. Specifically, the Jurisdictional Statement does not comply with the following mandates:

1. The jurisdictional statement required by paragraph 2 of Rule 13 shall contain in the order here indicated —

(b) A concise statement of the grounds on which the jurisdiction of this Court is invoked, showing:

(i) The nature of the proceeding and the statute pursuant to which it is brought;

(ii) . . .

(iii) The statutory provision believed to confer on this Court jurisdiction of the appeal;

(iv) Cases believed to sustain the jurisdiction;

(v) If the validity of the statute of a state, or statute or treaty of the United States is involved, its text shall be set out verbatim, citing the volume and page where it may be found in the official citation. . . .

(d) . . .

If the appeal is from a state court, the statement of the case shall also specify the stage in the proceedings in the court of first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised . . .

(e) If the appeal is from a state court, there shall be included a presentation of the grounds upon which it is contended that the federal questions are substantial, which shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional guidelines relied on.

(j) There shall be appended to the statement a copy of the Notice of Appeal showing the date it was filed and the name of the court where it was filed.

Even a cursory examination of the Jurisdictional Statement indicates that the appellant has omitted all of the required information listed above.

The appellant has failed to establish or even assert the basis for this Court having jurisdiction under 28 USC Section 1257 (2). His Jurisdictional Statement materially fails to comply with the requirements of Rule 15 of this Court. Furthermore, he submits nothing to establish that this case involves a substantial question for this Court to consider.

Based on the foregoing, it is apparent that this appeal is not within the jurisdiction of this Court because it is not taken in conformity with 28 USC Section 1257 (2). Additionally, it is not taken in conformity with Rule 15. Failing in these respects, the appeal should be dismissed.

Respectfully submitted,

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